



FEATURES THIS MONTH

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NEED GOOD SITES FOR STRATA CORPORATION INFORMATION?

Here are some sites you can access:

Strata U. - Continuing Education Department web site links of interest:

- Canadian Condominium Institute: <http://www.cci.ca>
- Condominium Home Owners Association: <http://www.choa.bc.ca/index.html>
- Clark, Wilson, Barristers & Solicitors: <http://www.cwilson.com/stratafaq>
- *Strata Property Act* information web site: http://www.qp.gov.bc.ca/statreg/stat/S/98043_01.htm
- Vancouver Condominium Services: <http://www.vancondo.com>

1. All Good Here

Your strata corporation is governed by the *Strata Property Act* of B.C. Is there a “police force” to monitor your actions as a strata council member? No. The Act is “self-policing” which means that you must conduct yourself voluntarily in respect of compliance. If you wilfully violate the Act, the remedy is the consequence of litigation in the Courts. So be good.

Your management company (VCS) is governed by *The Real Estate Services Act of B.C.* Is there a “police force” to monitor the actions of the management company? Yes. The Real Estate Council. If the management company violates any provision of the RESA, it is subject to discipline, fines and/or loss of license. We aim to be good.

2. Insurance For Strata Lots

Last month we pointed out that the *Strata Property Act* of B.C. mandates insurance for the strata corporation itself but says nothing about individual strata lots. Did the legislators make a mistake? Does it mean that each owner has to insure his or her own strata lot individually?

Section 149(1) states:

- 149** (1) *The strata corporation must obtain and maintain property insurance on*
- (a) *common property,*
 - (b) *common assets,*
 - (c) *buildings shown on the strata plan, and*
 - (d) *fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.*
- (2) *For the purposes of subsection (1) (d), "fixtures" has the meaning set out in the regulations.*
- (3) *Subsection (1) (d) does not apply to a bare land strata plan.*
- (4) *The property insurance must*
- (a) *be on the basis of full replacement value, and*
 - (b) *insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.*

Section 150 states that the strata corporation must obtain liability insurance and section 151 permits (it is not mandatory) the strata corporation to obtain errors and omissions insurance for council members. Nowhere does the legislation state that the strata corporation must insure individual strata lots. On the surface, it would seem that the statute does not consider the insuring of individual strata lots to be an obligation of the strata corporation. In fact, that view appears to be bolstered by Section 161 of the Act which states:

- 161 (1)** *Despite the Insurance Act or any other law, an owner may obtain and maintain insurance for any or all of the following:*
- (a) loss or damage to the owner's strata lot and the fixtures referred to in section 149 (1) (d)*
 - (i) against perils that are not insured by the strata corporation, and*
 - (ii) for amounts that are in excess of amounts insured by the strata corporation;*
 - (b) fixtures in the owner's strata lot, other than the fixtures referred to in section 149 (1) (d);*
 - (c) improvements to fixtures referred to in section 149 (1) (d);*
 - (d) loss of rental value of the owner's strata lot in excess of insurance obtained and maintained by the strata corporation;*
 - (e) liability for property damage and bodily injury, whether occurring on the owner's strata lot or on the common property.*
- (2)** *Despite this Act, the Insurance Act or any other law, an owner of a strata lot in a bare land strata plan may obtain and maintain insurance on buildings or fixtures built or installed on the strata lot.*

How curious, even bizarre. If we go back to Section 149 to see what is enunciated as detail, we see “common property” which we all know is not strata lots. “Common assets” is defined at Section 1 as:

- (a) personal property held by or on behalf of a strata corporation, and*
- (b) land held in the name of or on behalf of a strata corporation, that is*
 - (i) not shown on the strata plan, or*
 - (ii) shown as a strata lot on the strata plan;*

Clearly upon reading this definition, strata lots are not included.

The word “buildings” is not defined by the Act so exactly what that means is speculative. It is hard, however, to visualize “buildings shown on the strata plan” as meaning strata lots.

The fourth criteria at Section 149 is “fixtures” within a strata lot and this term is defined in the Regulation 9.1 as:

- 9.1 (1) *For the purposes of sections 149(1)(d) and 152(b) of the Act, “fixtures” means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items.*

Section 155 states:

- 155** *Despite the terms of the insurance policy, named insureds in a strata corporation's insurance policy include*
- (a) the strata corporation,*
 - (b) the owners and tenants from time to time of the strata lots shown on the strata plan, and*
 - (c) the persons who normally occupy the strata lots.*

It seems to us that strata lots were indeed left out of the criteria when the Act was written . . . an error by the legislature.

Fortunately, all strata corporation insurance policies provide for the criteria set out in Section 149 but also include strata lots. The policies are based on property appraisals which of course include the construction of the entire strata corporation; thus, there is no doubt that all strata lots are indeed insured - even though, remarkably, there is no specific mandate in the *Strata Property Act* to do so.

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3. Insurance... This Time It's Personal

Over the past few months, we have been attempting to educate our strata councils and owners on various issues concerning strata corporation insurance. Here we would like to further discuss the importance of personal home owner, tenant, and landlord insurance and how the ownership may be encouraged to protect themselves for a loss that may not be covered by the strata corporation's insurance policy.

Last month's insurance related article detailed Section 149 which spells out the requirement of property insurance for strata corporations and what the policy must cover. The point in purchasing additional insurance is to provide coverage for those items and areas that are specific to an individual owner or tenant. For example, Section 158 (1) & (2) (see below for reference) notes an insurance deductible is a common expense; however, our recent article on the Mari case (Bulletin #94) underlined how the goal posts determining who pays the deductible continue to move about. It is imperative that an individual's personal provide coverage for an insurance deductible that the strata council determines is their responsibility to pay.

Insurance deductible

158 (1) *Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).*

(2) *Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.*

Section 161 addresses owner's insurance and details some of the specifics of what may be obtained in the policy as follows:

Owner's insurance

161 (1) *Despite the Insurance Act or any other law, an owner may obtain and maintain insurance for any or all of the following:*

- (a) *loss or damage to the owner's strata lot and the fixtures referred to in section 149 (1) (d) → defined as fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.*
 - (i) *against perils that are not insured by the strata corporation, and*
 - (ii) *for amounts that are in excess of amounts insured by the strata corporation;*
- (b) *fixtures in the owner's strata lot, other than the fixtures referred to in section 149 (1) (d);*
- (c) *improvements to fixtures referred to in section 149 (1) (d);*
- (d) *loss of rental value of the owner's strata lot in excess of insurance obtained and maintained by the strata corporation;*
- (e) *liability for property damage and bodily injury, whether occurring on the owner's strata lot or on the common property.*

Notice that the wording in Section 161 (1) states “an owner may” which, of course, means it is their decision on whether they want to protect themselves and their property against a future possible loss. While you cannot make an individual exercise common sense or stipulate how they choose to spend their money, we believe it is prudent to consider adopting a bylaw similar to the following in the hopes that owners will abide by it and that it will serve as a justification for appropriate costs being borne by an owner's insurance policy:

- X *The owner of a strata lot must obtain and maintain and provide proof of insurance for all of the following:*
- (a) *loss or damage to the owner's strata lot not insured by the strata corporation, and*
 - (b) *fixtures, betterments, or improvements not built or installed by the owner developer as part of the original construction on the strata lot, and*
 - (c) *the contents within the strata lot, and*
 - (d) *liability for property damage and bodily injury, whether occurring on the owner's strata lot or on the common property.*

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4. Unenforceable Bylaw

Read the following bylaw proposed by a strata council, not managed by VCS:

“Non-resident owners must include a provision on their lease agreement that the landlord or a representative of the landlord will inspect the strata lot every three months. The owner would further submit in writing to the strata corporation that the said inspection has taken place. Failure to perform the inspection will result in a \$200 fine for each missed inspection.”

Would you say the concept is a very good idea? Would you say that the bylaw is enforceable?

We say “yes” to the first question and “no” to the second question. Here is why. Section 141 of the *Strata Property Act* states:

Restriction of rentals by strata corporation

- 141 (1)** *The strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except as provided in subsection (2).*
- (2) *The strata corporation may only restrict the rental of a strata lot by a bylaw that*
- (a) prohibits the rental of residential strata lots, or*
 - (b) limits one or more of the following:*
 - (i) the number or percentage of residential strata lots that may be rented;*
 - (ii) the period of time for which residential strata lots may be rented.*
- (3) *A bylaw under subsection (2) (b) (i) must set out the procedure to be followed by the strata corporation in administering the limit.*

The keywords are in subsection (1). **The strata corporation must not require the insertion of terms in tenancy agreements.**

Strata councils and management companies are frustrated with the problems and issues that arise from bad tenancies; however, the solution cannot be gained through the creation of bylaws or rules that interfere with lease agreements. In fact, in the event that a strata council finds itself in litigation against a non-resident (landlord) owner, the breach of Section 141(1) will work against the strata corporation. In other words, do not put yourself in a defense position that will diminish your opportunity to litigate successfully against an owner if and when the need arises. As

much as you would like to create some tough and meaningful bylaws to control the problems caused by bad tenants, you must comply with the law, even if you do not like it.

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5. Just Who Controls The Strata Council?

As good as *The Strata Property Act* is compared to previous legislation in B.C., or in other jurisdictions, there remain some mysterious and odd oversights. Recently our bulletins have reviewed insurance requirements and we pointed out that there is not a single word in the Act requiring the strata corporation to insure specifically the strata lots within (and which comprise) the strata corporation. Today's article touches on a completely different element of strata administration; yet, we are similarly amazed at the obvious oversight of a basic element of community governance - the control of the strata council itself. Section 26 states:

26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

Section 27, "Control of Council" is comprised of two parts. Let's start with subsection (1) which states:

27 (1) The strata corporation may direct or restrict the council in its exercise of powers and performance of duties by a resolution passed by a majority vote at an annual or special general meeting.

Breaking down subsection (1) into its two essential components, the first element to note is that the term "strata corporation" means "the owners", and that term is characterized at Section 2 of the Act which states:

- 2 (1) From the time the strata plan is deposited in a land title office,*
- (a) a strata corporation is established, and*
 - (b) the owners of the strata lots in the strata plan are members of the strata corporation under the name "The Owners, Strata Plan [the registration number of the strata plan]".*
- (2) Subject to any limitation under this Act or the regulations, a strata corporation has the power and capacity of a natural person of full capacity.*

So clearly, when reading Section 27(1) there can be no argument on the point that the owners may direct or restrict the council through a majority vote at an annual or special general meeting. That, however, is where clarity ceases to exist: the rest is a bit fuzzy. The “*exercise of powers and performance of duties*” by the council is a phrase that is somewhat nebulous. Where in the statute is it stated or defined what constitutes powers and duties? Go ahead, flip through the pages and you will not find any clear outline. At Section 4 some limited guidance is offered. It states:

4 The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.

Now go to Division 2 of the Standard Schedule of Bylaws - **Power & Duties of Strata Corporation.**

- Bylaw 8** *The strata corporation must repair and maintain all of the following:*
- (a) common assets of the strata corporation;*
 - (b) common property that has not been designated as limited common property;*
 - (c) limited common property, but the duty to repair and maintain it is restricted to*
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and*
 - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:*
 - (A) the structure of a building;*
 - (B) the exterior of a building;*
 - (C) chimneys, stairs, balconies and other things attached to the exterior of a building;*
 - (D) doors, windows and skylights on the exterior of a building or that front on the common property;*
 - (E) fences, railings and similar structures that enclose patios, balconies and yards;*
 - (d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to*
 - (i) the structure of a building,*
 - (ii) the exterior of a building,*
 - (iii) chimneys, stairs, balconies and other things attached to the exterior of a building,*
 - (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and*

- (v) *fences, railings and similar structures that enclose patios, balconies and yards.*

Remarkably, the entire Division, *Powers and Duties of Strata Corporation*, deals only with repair and maintenance of property. There is nothing in this division that speaks to insurance, bylaws, legal issues or the overall governance of the strata corporation. Indeed, and admittedly it is unlikely, bylaw 8 is a bylaw (not a basic statutory provision) so it is possible that it could be removed by a $\frac{3}{4}$ vote.

What all this boils down to is that, if Section 27 is read in its literal scheme, only bylaw 8 can be the target of a direction or restriction by the owners on the strata council. Obviously, that cannot be the intention of the Act and we, therefore, suggest that all other actions by the strata council that are spelled out in the statute (i.e. insurance, bylaws, legal issues and the overall governance) were supposed to be captured in the net cast by Section 27(1). What is also interesting and puzzling though is whether or not the owners can actually “direct” the council to do or not do something which the statute requires or which owners have a right to do themselves.

If this all sounds a bit confusing, follow along. A strata corporation managed by VCS, has over the past several years, repeatedly addressed a proposed bylaw restricting pets. The intended bylaw, which has the support of a near-majority of owners but which fails to achieve the $\frac{3}{4}$ vote threshold to become a valid bylaw, continues to be an annual event. Many owners are “sick and tired” of having to deal with this issue at every AGM/SGM and want the purveyors to “let it go”. As a means of blocking new attempts to propose the pet bylaw yet again, the owners at an upcoming AGM or SGM want to use Section 27 to “direct or restrict” the council from adding the pet bylaw onto AGM or SGM agendas for at least five years. Interesting, but can this be done?

Do a majority of owners at an AGM or SGM really have the ability to do this? Forgetting for a moment the poorly constructed mechanical composition of the statute as outlined above, can current owners actually thwart future owners from creating a bylaw? We think not.

We believe that the owners cannot use Section 27(1) to control the council in respect of duties and obligations that are mandated by the Act, the Regulation to the Act, or the bylaws (including bylaw 8).



Another complicating factor arising from Section 27(1) is the fact that the owners who wish, by majority vote, to control or restrict its council do not apparently have to give advance notice of their resolution. They can simply introduce it at the AGM/SGM for any issue whether or not on the agenda of the meeting.

All in all, although rarely does it surface, Section 27 is a part of our strata law that the government policy makers need to examine closely.

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